

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:MSR:HOU:TL-N-4471-99

MSFriedman

date: December 7, 1999

to: Chief, Appeals Division, Houston District  
Attn: Judith Clark

from: District Counsel, Houston District

subject: [REDACTED] and [REDACTED]  
Request for Legal Advice and Assistance

This memorandum is in response to your request for advice regarding the appropriate wording for agreements to extend the statute of limitations (Forms 872 and 977) with respect to the above-noted CEP (Nondocketed) Large Case consolidated group and Foreign Sales Corp. The advice which follows was coordinated with our National Office.

**FACTS**

A. [REDACTED]

The original parent entity, [REDACTED] (EIN [REDACTED]), (hereafter, "old [REDACTED]") filed consolidated corporate income tax returns (Forms 1120) in the name of [REDACTED] for the fiscal years ending on June 30, [REDACTED], and [REDACTED]. On [REDACTED], the [REDACTED] division of [REDACTED], was spun off as a separate entity; however, as the [REDACTED] name was associated with the [REDACTED] business, this new company took the [REDACTED] name, but obtained a new EIN ([REDACTED]). (For convenience here, this new entity will be referred to as "new [REDACTED].") As part of the spin off, some of the subs of old [REDACTED] were also transferred to new [REDACTED] and new [REDACTED] has commenced filing consolidated returns as the common parent of this new group for subsequent periods. On [REDACTED], the consolidated group composed of new [REDACTED] and all its subsidiaries was acquired by [REDACTED]. [REDACTED] intends to maintain new [REDACTED] and its subsidiaries as separate companies wholly owned by [REDACTED].

Simultaneous with the spinoff, what remained of old [REDACTED] changed its name to [REDACTED] and continued on, retaining the original EIN. At approximately the same time, [REDACTED] merged with a Swedish firm called [REDACTED]. The Tax Manager of new [REDACTED] explains that this merger was accomplished by having the stockholders of [REDACTED], which was then publicly held, exchange their shares of stock in [REDACTED]

■■■■■, for shares in a newly created entity named ■■■■■ exchanged its shares of ■■■■■ for shares of ■■■■■. As such ■■■■■ survived the merger and is now a subsidiary of ■■■■■, which as the common parent files consolidated returns for a new group, ■■■■■.

The following consents, Forms 872, have been previously secured, captioned and extending the statutory periods as indicated:

<u>Entity (as styled on form)</u>	<u>Year(s) Ending</u>	<u>Signed</u>	<u>Extended To</u>
■■■■■	■■■■■ & ■■■■■	■■■■■	■■■■■
■■■■■ (Formerly: ■■■■■)	■■■■■, ■■■■■ and ■■■■■	■■■■■	■■■■■
■■■■■ EI ■■■■■ * [At the bottom of the first page following the * is: Successor in interest to ■■■■■ EI ■■■■■ (Formerly: ■■■■■)]	■■■■■, ■■■■■ and ■■■■■	■■■■■	■■■■■

In addition a Transferee Agreement, Form 2045, was obtained for the taxable years ending June 30, ■■■■■, ■■■■■, and ■■■■■ reflecting ■■■■■ (■■■■■) as the transferor and ■■■■■ (■■■■■) as the transferee.

A Form 977 consent regarding the transferee liability has also been obtained as follows:

<u>Entity (as styled on form)</u>	<u>Year(s) Ending</u>	<u>Signed</u>	<u>Extended To</u>
■■■■■ [as transferee for any liability imposed against] ■■■■■ EI ■■■■■ (Formerly: ■■■■■)	■■■■■, ■■■■■ and ■■■■■	■■■■■	■■■■■

B. ■■■■■

■■■■■ is a foreign sales corporation which was originally a subsidiary of old ■■■■■, but which on ■■■■■ was among those subsidiaries transferred to new ■■■■■. As a foreign sales corporation it has and continues to file its own Form 1120FISC returns and is not part of any consolidated group.

The following consents, Forms 872, have been secured, captioned and extending the statutory periods as indicated:

<u>Entity</u>	<u>Year(s) Ending</u>	<u>Signed</u>	<u>Extended To</u>
[REDACTED]	[REDACTED] & [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED], [REDACTED] and [REDACTED]	[REDACTED]	[REDACTED]

### RECOMMENDATIONS

#### A. [REDACTED]

The primary rule for returns filed on a consolidated basis is that the common parent for a particular year is the proper party to extend the statute of limitations on behalf of itself and each member of a consolidated group. Treas. Reg. § 1.1502-77(a) and (c). The common parent remains the agent for the members of the consolidated group for years during which it was the common parent as long as it remains in existence and regardless of whether it is still the common parent, whether one or more of the subsidiaries have ceased being members of the group, or even whether the group terminates. Treas. Reg. § 1.1502-77(a); Temp. Treas. Reg. § 1.1502-77T; Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985). Where the common parent of the group ceases to be the common parent, Temp. Treas. Reg. § 1.1502-77T also provides for certain alternative agents, including certain successor entities.

As [REDACTED], which is the continuation of old [REDACTED], remains in existence, it is still the agent for all the subsidiaries which were part of the original [REDACTED] consolidated group during the taxable periods in question. New [REDACTED] however, is a new entity carved out of old [REDACTED] in the spin off. A spinoff is a divisive D reorganization and as such is not subject to section 381(a). Since section 381(a) does not apply to this transaction, new [REDACTED] is not a proper party authorized under Temp. Treas. Reg. § 1.1502-77T (a)(4)(ii) to sign a Form 872 for [REDACTED] for the tax years in question. Nevertheless, we can still address new Morton's potential liability as a transferee with regard to these tax years by securing a Form 977 from this entity. Though new [REDACTED] and its subsidiaries have now been acquired by [REDACTED] Hass, new [REDACTED] survives intact as a subsidiary. Thus, we do not believe that the acquisition of new [REDACTED] and its subsidiaries by [REDACTED] changes how the Form 977 should be styled.

Accordingly, we recommend that a consent be obtained from [REDACTED], [REDACTED], which is styled exactly the same as the one procured in [REDACTED]. In addition, a Form 977 consent regarding transferee liability should be obtained from

\_\_\_\_\_ (new \_\_\_\_\_). This should also be styled and completed exactly like that obtained in \_\_\_\_\_.

**B.**

The consent secured from this entity should be styled identical to that secured in [REDACTED].

### C. General

The consents obtained must be signed by currently responsible "Officers" with the apparent and actual authority to execute these forms for each of these surviving entities. In the case of a corporation, persons authorized to sign a consent include the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to act whether or not that person was the same individual who signed the return.

Should you have any questions with respect to these matters, please contact the undersigned at (281) 721-7372.

**BERNARD B. NELSON**  
District Counsel

**By:**

  
MARION S. FRIEDMAN  
Assistant District Counsel

cc: Assistant Regional Counsel (TL), Midstates Region, Mark E. O'Leary  
Assistant Regional Counsel (LC), Midstates Region, Rebecca W. Wolfe

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